HIGH COURT OF UTTARANCHAL AT NAINITAL

(Court's order whether the case is or not approved for reporting.)

(Chapter VIII, Rule 32 (2)(b)

Description of the case.

A.O. No. 36 of 2005

Smt. Asha & others. Appellants

Versus

Sri Masoom Ahamad & another Respondents

A.O. No. 123 of 2005

United India Insurance co. Ltd; Appellant

Versus

Smt. Asha & others Respondents

Approved for reporting.

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Not approved for reporting

Date of decision 20.11.2006

Initial of Judge

HIGH COURT OF UTTARANCHAL AT NAINITAL

Appeal from Order No. 36 of 2005

1. Smt. Asha w/o Late Sri Ramkumar
2. Mukesh s/o Sri Ramkumar
3. Km. Puja d/o Lat Sri Ramkumar
4. Rahul s/o late Sri Ramkumar
5. Deepu s/o Sri Ramkumar
6. Km. Jyoti D/o Late Sri Ramkumar
   All residents of village Simaliya, Thana Kemari, District Rampur

..... Appellants

Versus

1. Sri Masoom Ahamad s/o Sri Mohd. Ahmad R/o Nai Basti, Near Gopal Mandir, Haldwani (Nainital)
2. United India Insurance Company Limited, Branch Dehradun trough Divisional Manager, united India Insurance Co. Ltd; Divisional Officer, Haldwani

..... Respondents

Sri Z.U. Siddique, Advocate for the appellants.
Sri Naresh pant, Advocate for the respondent no. 2

Appeal from Order No. 123 of 2005

United India Insurance Company Limited, Branch Dehradun trough Divisional Manager, united India Insurance Co. Ltd; Divisional Officer, Haldwani

..... Appellant

versus

1. Smt. Asha w/o Late Sri Ramkumar
2. Mukesh s/o Sri Ramkumar
3. Km. Puja d/o Lat Sri Ramkumar
4. Rahul s/o late Sri Ramkumar
5. Deepu s/o Sri Ramkumar
6. Km. Jyoti D/o Late Sri Ramkumar

All residents of village Simaliya, Thana Kemari, District Rampur

7. Sri Masoom Ahamad s/o Sri Mohd. Ahmad R/o Nai Basti, Near Gopal Mandir, Haldwani (Nainital)

.....Respondents

Sri Naresh pant, Advocate for the appellant
Sri Z.U. Siddique, Advocate for respondents no. 1 to 6

Dated: November 20, 2006

Coram: Hon'ble Rajeev Gupta, C.J.
Hon'ble Rajesh Tandon, J.

Hon. Rajesh Tandon, J.

1) Both the appeals are arising out of the award dated 15.12.2004, passed by the Motor Accident Claims Tribunal, Nainital, therefore, they are being taken up together for disposal.

2) The Claimants preferred a claim petition under section 166 of the Motor Vehicles Act, for the grant of compensation on account of the death of Sri Ram Kumar in a motor vehicle accident. According to the claimants on the fateful day on 24.12.2003 at 10.00 AM near Peoples College, Rampur Road, Hadwani a Tata Summo No. UA 04/7645 dashed the deceased, while he was going on foot. The claimants have alleged that the offending vehicle was being driven rashly and negligently by its driver. The deceased sustained head injury. He was rushed to Civil Hospital from where he was referred to Sai Hospital, Moradabad. The deceased remained hospitalised till 29.12.2003. On 29.12.2003 he succumbed to the injuries sustained. According to the claimants the deceased used to supply goats to army and was earning Rs.6,000/-per month. They claimed Rs. 8,40,000/- as compensation.

3) The respondent no. 1, Masoom Ahmad has filed the written statement and submitted that the accident had taken place due to the negligence of the deceased himself, who was crossing the road without noticing the vehicles. He has submitted that at the time of accident the vehicle was insured with United India Insurance co. and the insurer is liable to pay compensation to the claimants, if any.

4) Appellant United India Insurance Co. has filed written statement and submitted that the claim petition is not maintainable. The offending vehicle was not being driven according to the terms and conditions of the insurance policy and the insurance company is not liable to pay compensation.

5) The claimants examined P.W.1 Smt. Asha and P.W.2 Vir Singh and have filed the copy of the death certificate and prescriptions, bills and cash memos. Respondent Masoom Ahamad has filed Insurance cover note, registration certificate of the vehicle, fitness certificate, permit and licence of the driver.

6) On the basis of the evidence on record, the Claims Tribunal has held that the accident had taken place due to the rash and negligent driving of the driver of Tata Summo.

7) So far as the compensation is concerned the Tribunal has recorded the finding that at the time of accident the age of the deceased was 45 years. The claims Tribunal has assessed his monthly notional income at Rs.3,000/- per month or Rs.36,000/- per annum and after deducting 1/3 of the amount for his own expenses by the deceased, the annual loss of dependency was assessed to Rs.24,000/-. Considering the age of the deceased as well as the claimants, multiplier of 13 has been selected by the Trial Court. Thus the total pecuniary loss

sustained by the claimants comes to Rs. 24,000 x 13 = 3,12,000/-. Beside this the Claims Tribunal has also awarded a sum of Rs. 28,386/- for the expenses incurred in the treatment of the deceased. Thus claims Tribunal has awarded a total sum of Rs.3,40,000/-towards the compensation. The appellant was directed to pay the amount of award within two months failing which interest @ 6% will also be payable.

8) Sri Naresh Chand Pant, counsel for the Insurance Company has submitted that the accident had taken place due to the own negligence of the deceased as he was crossing the road without noticing the vehicle on the road. Sri Z.U. Siddique counsel for the claimants has submitted that the Claims Tribunal has not properly assessed the amount of compensation and the amount of compensation deserves to be enhanced. He has further submitted that the Tribunal has erred in law by not awarding interest on the amount of compensation.

9) The claimants have alleged that the accident had taken place due to rash and negligent driving by the Driver of Tata Summo No. UA 04-7645. In support of their assertion the claimants have examined P.W.2 Veer Singh. This witness has stated on oath that on 24.12.2003 at 10.00 PM, he along with deceased Ram Kumar was going to Rampur Road from Gandhi Nagar, when they reached in front of Peoples' College, Tata Summo No. US 04-7645 came from the side of Haldwani and dashed Sri Ram Kumar. According to this witness the driver of Tata Summo was driving the vehicle rashly and negligently at the time of accident. This witness was cross-examined at length but nothing has come out in cross-examination, which may discredit the testimony of this witness. On the other hand opposite parties have not examined any witness. Although the

driver of Tata Summo was the best witness to state about the cause of the accident but the opposite parties did not care to produce him in the witness box. Thus the Claims Tribunal was perfectly justified by holding that the accident had taken place due to rash and negligent driving by the driver of Tata Summo No. UA 04-7645.

10) So far as the amount of compensation is concerned, there is no documentary proof on record regarding the income of the deceased. The wife of the deceased Smt. Asha P.W.1 has stated on oath that the deceased used to supply goats and sheep and was earning Rs.6,000/- per month. The claims Tribunal assessed his income at Rs.3,000/- per month or Rs.36000/- per annum. After deducting 1/3rd for his own expenses the annual dependency on the income of the deceased was assessed to Rs.24,000/-. In our opinion the Claims Tribunal has assessed the income of the deceased properly.

11) The Claims Tribunal after considering the age of the deceased selected multiplier of 13. In the claim petition the age of the deceased has been mentioned as 40 years whereas in the post mortem report it has been shown as 45 years. Thus the age of the deceased at the time of accident was in between 40 to 45 years and as such a multiplier of 14 would be just and proper. Thus by multiplying the annual dependency of Rs.24,000 with 14, compensation comes to Rs.3,36,000/-.

12) Regarding treatment the claimants have filed the bills and vouchers for Rs.28,386/- incurred in the treatment of the deceased. Thus the claimants are also entitled to get medical expenses of Rs.28,000/; a sum of Rs.5,000/- for loss of consortium, Rs.5,000/- for loss of estate and Rs.5,000/- for funeral expenses. Thus a total sum of Rs.3,36,000 + 28,000 +

5,000+ 5000+ 5000 = Rs.3,79,000/- is awarded as compensation to the claimants.

13) The Apex Court in the case of **T.N. State Transport Corporation Ltd. vs. S. Rajapriya and others, (2005) 6, SCC 236,** has held that the in a motor accident claim case, what is important is that the compensation to be awarded by the Tribunal/Court should be just and proper compensation in the facts and circumstances of the case.

> ***"8.*** *The assessment of damages to compensate the dependants is beset with difficulties because from the nature of things, it has to take into account many imponderables e.g. the life expectancy of the deceased and the dependants, the amount that the deceased would have earned during the remainder of his life, the amount that he would have contributed to the dependants during that period, the chances that the deceased may not have lived or the dependants may not live up to the estimated remaining period of their life expectancy, the chances that the deceased might have got better employment or income or might have lost his employment or income together.*
>
> ***9.*** *The manner of arriving at the damages is to ascertain the net income of the deceased available for the support of himself and his dependants, and to deduct therefrom such part of his income as the deceased was accustomed to spend upon himself, as regards both self-maintenance and pleasure, and to ascertain what*

part of his net income the deceased was accustomed to spend for the benefit of the dependants. Then that should be capitalised by multiplying it by a figure representing the proper number of years' purchase.

10. *Much of the calculation necessarily remains in the realm of hypothesis "and in that region arithmetic is a good servant but a bad master" since there are so often many imponderables. In every case "it is the overall picture that matters", and the court must try to assess as best as it can the loss suffered."*

14) The Claims Tribunal has not awarded the interest as provided under Section 171 of the Motor Vehicle Act. Section 171 of the Motor Vehicles Act reads as under:

171. Award of interest where any claim is allowed-

Where any Claims Tribunal allows a claim for compensation made under this Act, such Tribunal may direct that in addition to the amount of compensation simple interest shall also be paid at such rate and from such date not earlier than the date of making the claim as it may specify in this behalf.

16) The Apex Court in the case **Kaushnuma Begum vs. New India Assurance Company Ltd; (2001) 2 SCC 9** as held as under:

"24. Now, we have to fix up the rate of interest. Section 171 of the MV Act empowers the

Tribunal to direct that "in addition to the amount of compensation simple interest shall also be paid at such rate and from such date not earlier than the date of making the claim as may be specified in this behalf." Earlier, 12% was found to be the reasonable rate of simple interest. With a change in economy and the policy of Reserve Bank of India the interest rate has been lowered. The nationalised banks are now granting interest at the rate of 9% on fixed deposits for one year. We, therefore, direct that the compensation amount fixed hereinbefore shall bear interest at the rate of 9% per annum from the date of the claim made by the appellants."

17) It is well settled that the Claims Tribunal is required to award interest on the amount of compensation at the prevalent rate of interest on fixed deposit for one year by the nationalized Banks.

18) In the case **Bijoy Kumar Dugar vs. Vidya Dhar Dutta (2006) 3 SCC 242,** the Apex Court has held as under:-

"MACT has awarded interest at the rate of 10% per annum on the amount of compensation from the date of filing of the claim application till the date of payment. It is a discretionary relief granted by MACT and, in our view, the discretion exercised by MACT cannot be said to be inadequate and inappropriate."

19) Award of interest would normally depend upon the bank rate prevailing at the relevant time. In the present case, we are of the opinion that interest at the rate of 7% per annum from the date of filing of the claim petition, shall meet the ends of

justice. With a view to avoid any delay in the computation of the amount of interest, we deem it proper to quantify the amount of interest payable to the claimants. We, therefore, quantify the amount of interest at Rs.21,000/- Thus the claimants are entitled to get a total sum of Rs.4,00,000/- inclusive of interest.

20) Thus in view of the above, A.O. No. 36 of 2005, Smt. Asha & others vs. Sri Masoom Ahmad & another is allowed. The amount of compensation awarded by the Claims Tribunal is enhanced to the extent of Rs.3,79,000/-. Beside this the claimants are also entitled to get Rs.21,000/- as interest.

21) The United India Insurance Company Ltd; is directed to pay the amount of compensation and interest within two months. The amount deposited in the High Court be remitted to the Claims Tribunal concerned forthwith.

20) Consequently, A.O. No. 123 of 2005, United India Insurance Co. Ltd; vs. Smt. Asha Devi and others is dismissed.

21) No order as to costs.

(Rajesh Tandon, J.) **(Rajeev Gupta, C.J.)**

Dated: November 20, 2006
*Dhyani